

# Exhibit A



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

# ORDER

**FTA O 2400.1**

December 15, 2016

**Subject: PROCEDURES FOR ADMINISTERING REMEDIES AND SANCTIONS**

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**1. PURPOSE.** The purpose of this Order is to establish uniform internal guidance for administering remedies and sanctions for noncompliance with Federal requirements by Federal Transit Administration (FTA) Recipients when:

- a. Agency oversight determines that a Recipient has failed to comply with Federal requirements and FTA action is necessary to protect Federal interests pending satisfactory completion of corrective action by the Recipient;
- b. A Recipient has failed to timely and satisfactorily complete corrective actions;
- c. FTA has determined that a Recipient's noncompliance cannot be cured or waived;
- d. FTA has a reasonable basis for concern that a Recipient may be in noncompliance with a Federal requirement; or
- e. FTA has determined during a pre-award review that measures must be taken to prevent recurring issues in an existing award or past performance issues from interfering with a new or current award.

**2. REFERENCES.**

- a. Title VI of the Civil Rights Act of 1964 and applicable U.S. Department of Transportation (DOT) regulations at 49 CFR Part 21.
- b. Federal Transit Act, 49 U.S.C. § 5332, Nondiscrimination.
- c. Participation by Disadvantaged Business Enterprises in DOT Financial Assistance Programs, 49 CFR Part 26.
- d. Americans with Disabilities Act of 1990 and applicable DOT regulations at 49 CFR Parts 27, 37, 38 and 39.
- e. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 and DOT's regulation at 2 CFR Part 1201.

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**Distribution:** FTA Headquarters Offices (T-W-2)  
FTA Regional Offices (T-X-2)

**OPI:** Office of Chief Counsel

- f. Federal Debt Collection Improvement Act of 1966, 31 U.S.C. § 3701, *et seq.*
- g. Internal Procedures for Debt Collection, FTA O 2060.1A. July 2, 2008.
- h. Governmentwide Debarment and Suspension, 2 CFR Parts 180 and 2 CFR Parts 1200.
- i. DOT Order 4200.5F, “Suspension and Debarment, and Ineligibility Procedures.” December 22, 2014.
- j. FTA “Master Agreement.”
- k. FTA Grants A to Z Standard Operating Procedures Document.

### **3. DEFINITIONS.**

- a. “Corrective Action” means an action that is required to bring a Recipient into compliance with Federal requirements, adhere to administrative, financial, and/or grants management standards, or improves a Recipient’s processes.
- b. “Non-compliance” means that the Recipient is not conforming to applicable statutes, regulations, guidance, standards, or terms and conditions of the award.
- c. “Recipient” means a state or local governmental authority, or other entity that receives Federal assistance from FTA.
- d. “Remedy” means a temporary action that FTA takes in response to a Recipient’s failure to comply with a Federal statute, regulation, the FTA Master Agreement, and/or a corrective action, or when FTA has a reasonable basis for concern that a Recipient may be in noncompliance with a Federal requirement. The remedy is lifted once the noncompliance is corrected.
- e. “Sanction” means a permanent action that FTA takes when it determines that a Recipient’s compliance with Federal requirements cannot be secured, or a Federal requirement mandates that FTA take a specific action as a result of a Recipient’s noncompliance.

- 4. **POLICY.** FTA ensures that Recipients of Federal assistance adhere to all applicable Federal requirements. Recipients must address noncompliance promptly. When FTA determines or has reasonable basis for concern that a Recipient is not in compliance with a Federal requirement, FTA will use appropriate measures available to address the noncompliance.

It is FTA's goal to use remedies and sanctions consistently throughout its organization, including headquarters and regional offices. This Order provides a common framework and outlines FTA's policies regarding the use of remedies and sanctions to guide FTA staff when administering them. These policies include identifying, tracking, and documenting the remedies and sanctions available for use. The Order preserves appropriate discretion, to be exercised in accordance with the factors in Section 7.

## **5. APPLICABILITY.**

This Order is applicable when:

- a. FTA oversight determines that a Recipient has failed to comply with Federal requirements and FTA action is necessary to protect Federal interests pending satisfactory completion of corrective action by the Recipient;
- b. A Recipient has failed to timely and satisfactorily complete corrective actions;
- c. FTA has determined that a Recipient's noncompliance cannot be cured or waived;
- d. FTA has a reasonable basis for concern that a Recipient may be in noncompliance with a Federal requirement; or
- e. FTA has determined during a pre-award review that measures must be taken to prevent recurring issues in an existing award or past performance issues from interfering with a new or current award.

Examples of such situations include but are not limited to:

- a. Grantee's continued practice of drawing down funds prematurely or in excess of eligible expenses, having excess cash on hand, or drawing funds down against the wrong grant or for ineligible activities;
- b. Failure to repay funds to FTA in a timely manner;
- c. Inactive grants not being closed out;
- d. Oversight review/audit deficiencies not being resolved as scheduled;
- e. Unaddressed repeat findings in oversight reviews or other monitoring efforts;
- f. Failure to comply with Federal Civil Rights requirements; or

- g. The absence of other required program updates/plans such as Federal Financial Reports and Milestone Progress Reports.

This Order is to be read in conjunction with existing and applicable statutes, regulations, FTA circulars, FTA Orders, Standard Operating Procedures (SOPs), and all other applicable Federal requirements, and does not supplant them. Examples include but are not limited to: the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 and the U.S. Department of Transportation's implementing regulation 2 CFR Part 1201; Internal Procedures for Debt Collection, FTA O 2060.1A; Grants A to Z; DOT Order 4200.5F "Suspension and Debarment, and Ineligibility Procedures"; Title VI of the Civil Rights Act; and, the Americans with Disabilities Act and applicable DOT regulations at 49 CFR Parts 27, 37, 38 and 39.

6. **BACKGROUND.** As a condition for receiving FTA funds, Recipients must agree to follow all applicable Federal requirements, as set forth or referenced in FTA's Master Agreement. In order to assess Recipient compliance with Federal requirements, FTA uses a variety of oversight audit or review programs including: Comprehensive management (Triennial and State Management), Civil Rights, Procurement, Financial, project monitoring, Drug and Alcohol, and reviews of Single Audits. FTA may discover a Recipient's noncompliance with Federal requirements through many avenues, including but not limited to one of its oversight programs, by Recipient self-reporting, or from a third party such as the DOT Office of the Inspector General (OIG). Once FTA becomes aware of a Recipient's noncompliance with a Federal requirement or has a reasonable basis for concern that a Recipient may be in noncompliance, FTA responds through the use of technical assistance, corrective actions, remedies, or sanctions.
7. **UTILIZING REMEDIES AND SANCTIONS.** FTA may undertake many activities before electing to utilize a remedy or sanction, such as a requirement for a corrective action plan following an oversight finding. The election to apply a specific mitigation technique for non-compliance lies with the FTA Regional Administrators and Associate Administrators or their designees. Decisions to impose sanctions require concurrence from the FTA Administrator. Decisions to use remedies generally are delegated to the discretion of the Regional Administrators and Associate Administrators. Some circumstances however warrant concurrence from the FTA Administrator. Such circumstances include, but are not limited to:
  - a. The suspension of electronic draw down privileges for all grants, as opposed to a partial suspension;
  - b. Remedies involving a project funded by a Capital Investment Grant or TIGER grant;
  - c. A Recipient is under investigation by the DOT OIG for possible fraud, waste, or abuse of FTA funds; or

- d. A Recipient is one of the “Top Fifty Agencies,” per the National Transit Database.

In determining the type of remedy or sanction to utilize, FTA will consider the following factors:

- a. The nature and circumstances of the noncompliance;
- b. The extent and gravity of the noncompliance;
- c. Whether the Recipient has a history or pattern of similar noncompliance;
- d. The Recipient’s experience with administering FTA funds;
- e. Whether the Recipient disclosed the noncompliance to FTA;
- f. The extent to which the Recipient has completed corrective action(s);
- g. Whether the Recipient has taken any systemic actions to prevent future noncompliance;
- h. The financial capacity of the Recipient; and
- i. Other special considerations.

**8. REMEDIES.** When FTA determines that it is necessary to take actions to protect Federal interests pending a Recipient’s completion of corrective action, when a grantee has failed to timely complete required corrective action, when there is recurring noncompliance, or when FTA has a reasonable basis for concern that a Recipient may be in noncompliance, FTA may take one or more of the following actions, as appropriate. These remedies include, but are not limited to the following:

- a. Place restrictions (special grant conditions) on future grant approvals involving the area(s) of noncompliance. Such a restriction is included as a special grant condition that prohibits Recipients from drawing down funds from the grant until the condition is satisfied.
- b. Restrict electronic grant payment privileges. The Recipient is placed on Electronic Clearing House Operation (ECHO) restriction, following the Grants A-Z Standard Operation Procedure (SOP) on FTA Payment Suspension. The Recipient may draw down funds after payment review and approval by FTA. ECHO restriction ends when FTA determines that the conditions leading to the use of the remedy have been corrected.
- c. Temporarily withhold cash payments pending correction of the noncompliance or deficiency. The Recipient is placed on ECHO suspension, following the SOP on FTA Payment Suspension. The Recipient may draw down funds after FTA determines that the conditions leading to use of the remedy have been corrected.

d. Temporarily withhold further Federal awards for the project or program.

9. **SANCTIONS.** When FTA determines that a Recipient's noncompliance with Federal requirements cannot be cured or waived, or a Federal requirement mandates a specific action to be taken following a Recipient's noncompliance, FTA may take one or more of the following sanctions, as appropriate under the circumstances:

- a. Disallow all or part of the cost of the federally funded activity in non-compliance. If FTA determines that the Recipient's noncompliance has resulted in a debt owed to FTA, debt collection procedures pursuant to FTA Order 2060.1A will be followed.
- b. Permanently withhold further Federal awards for the project or program.
- c. Wholly or partially terminate the Federal award.
- d. Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and DOT regulations 49 CFR Part 29 and the Federal Acquisition Regulation part 9.4.
- e. Take any other action authorized by Federal law.

10. **DOCUMENTATION AND TRACKING.** When FTA decides to administer a remedy or sanction, the decision and resolution of the noncompliance issue must be documented and tracked. Use of remedies and sanctions will be tracked centrally at FTA Headquarters through use of a centrally shared site. The tracking system will include the following: Recipient's name, TrAMS Recipient ID, the applicable Federal Award Identification Number (FAIN), the reason for imposing the remedy or sanction, the date the remedy or sanction was imposed, and the date when the remedy is lifted. Copies of the formal letters described below will be stored centrally in the tracking system for each application of a remedy or sanction.

FTA must notify the Recipient in writing when imposing a remedy or sanction. The requirements of the notification process are outlined below.

a. Notice of Action

FTA will notify the Recipient in writing when imposing a remedy or sanction that must include descriptions of:

- 1) The identified noncompliance issue that requires the use of a remedy or sanction;
- 2) The justification for the remedy or sanction that FTA is imposing;
- 3) The corrective action(s) the Recipient must take to come into compliance, if the action is a remedy; and

- 4) The method for the Recipient to request reconsideration, if appropriate or as prescribed by Federal law.

b. Notice of Remedy Conclusion

If the Recipient resolves the noncompliance by taking appropriate corrective action(s), FTA will notify the Recipient in writing that the remedy has been concluded. This notification will include:

- 1) A description of the corrective actions taken;
- 2) A statement that the noncompliance issue is resolved; and
- 3) A statement that the remedial status has been lifted.

**11. RESPONSIBILITIES.** The responsibilities of executive level officials are summarized below.

- a. The Office of Program Oversight is responsible for maintaining the central shared site where use of remedies and sanctions will be tracked, and monitoring and reporting on FTA's use of remedies and sanctions.
- b. The Office of Civil Rights is responsible for making determinations on potential civil rights violations and taking appropriate action.
- c. The Office of Chief Counsel is responsible for legal advice related to imposing remedies and sanctions. Regional Counsels provide legal reviews for their Region in consultation with the Chief Counsel.
- d. Each Regional Administrator and Associate Administrator who obligates grants is responsible for:
  - 1) coordinating with the Office of the Administrator and other program offices as necessary;
  - 2) determining the appropriate remedy or sanction action;
  - 3) tracking the use of remedies and sanctions using the centrally shared site;
  - 4) providing all formal communication with the Recipient regarding the remedy or sanction;
  - 5) resolving a Recipient's request for reconsideration of FTA's decision to impose a remedy or sanction, if applicable;



- 6) ensuring the Recipient takes appropriate corrective action to resolve the noncompliance, if applicable; and
  - 7) maintaining a file for each Recipient when a remedy or sanction has been utilized. The file shall contain a record of all communications with the Recipient and supporting documentation justifying the imposition and lifting of the remedy and/or sanction, if applicable. Records regarding correspondence, supporting documents and related materials must be maintained in the Recipient file.
- e. The Executive Management Team is responsible for periodically reviewing the tracked remedies and sanctions data and discussing lessons learned and best practices to ensure the process remains effective, flexible, and is implemented in a manner consistent with this Order.

*(Original Signed by Carolyn Flowers)*

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Carolyn Flowers  
Acting Administrator